

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JERMAINE ZACK SELLOW,)
)
 Petitioner,)
)
v.)
)
WARDEN, Effingham County Jail,)
)
 Respondent.)

Case No. CV415-245

ORDER

Convicted in state court of aggravated stalking and trespass, Jermaine Zack Sellow petitioned this Court for 28 U.S.C. § 2254 relief. Doc. 1. In a Report and Recommendation (R&R), the undersigned advised that it should be summarily dismissed under Rule 4 of the Rules Governing 28 U.S.C. § 2254 Cases. Doc. 2. Sellow himself revealed that his direct appeal from that conviction was “pending,” doc. 1 at 2, and he even furnished his September 2, 2015 notice of appeal from the state trial to the state appellate court. Doc 1-1 at 20. Hence, his claims were unexhausted. Doc. 2 at 2 (citing *O'Sullivan v. Boerckel*, 526 U.S. 838, 845

(1999); *see also Mason v. Allen*, 605 F.3d 1114, 1119 (11th Cir. 2010) (quoting *Boerckel*)).

Objecting to that R&R, Sellow furnished documentation showing that his state court appeal had been rejected on formality grounds. Doc. 4-1 at 1 (“Please be advised your Appeal is not in proper form and there them is being returned to you.”); *id.* at 2 (“There is no case pending in the Court of Appeals of Georgia under your name.”). The district judge here thus rejected the R&R. Doc. 5. In another R&R the undersigned advised dismissal under abandonment grounds: The Clerk served the rejection ruling but it came back as “undeliverable,” which meant that Sellow had failed to keep the Court advised of his current address. Doc. 7 at 2. In his Objection to that, Sellow explains that he had been transferred and that prison authorities had failed to properly process his mail. Doc. 10.

The Court accepts that explanation, **VACATES** its October 21, 2015 R&R (doc. 7), and **DIRECTS** the Respondent to Answer or Move to Dismiss the petition within 60 days of the date this Order is served. To that end, the Clerk shall serve this Order pursuant to the Memorandum of

Understanding contained in this Court's December 3, 2015 General Order, MC415-022 (S.D. Ga. Dec. 3, 2015) ("add the Attorney General's Office of the State of Georgia as a 'Notice Only Party' to the Court's Case Management and Electronic Case Filing System (CM/ECF).").

SO ORDERED, this 10th day of February, 2016.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA